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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

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UNITED STATES OF AMERICA	)	CASE NO. CR-05-10175-WGY
Plaintiff	)	<b>DEFENDANT'S OBJECTION TO</b>
Vs.	)	<b>ARRAIGNMENT BY MAGISTRATE</b>
Nadine J. Griffin	)	<b>JUDGE: NO CONSENT GIVEN</b>
Defendant	)	

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COMES NOW, Nadine J. Griffin, hereinafter "defendant," filing this formal objection to being arraigned by magistrate judge Royce London Alexander pursuant to Federal Rules of Criminal Procedure (FRCrP) 5(c), Federal Rules of Civil Procedure (FRCP) 72(a), and 28 U.S.C. § 631 through 636 et. seq..

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The following rule does not provide an exemption under any circumstances for a magistrate is allowed to arraign cases that he/she has no jurisdiction to hear. Rules 5. Provides for the following:

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**Federal Rules of Criminal Procedure (FRCrP) Rule 5(c). Offences Not Triable by the United States Magistrate Judge. If the charge against the defendant is not triable by the united states magistrate judge, the defendant shall not be called upon to plead.** The magistrate judge shall inform the defendant of the complaint against the defendant and of any affidavit filed therewith, of the defendant's right to retain counsel or to request the assignment of counsel if the defendant is unable to obtain counsel, and of the general circumstances under which the defendant may secure pretrial release.

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2       2. The rules further denotes the term "shall" as if to imply a mandatory element of that rule. In  
 3 support of Rule 5, the Defendant points out Rule 58. Petty offences and other misdemeanors.  
 4 (a.)(3)(A) Arraignment. Plea Before a Magistrate Judge. "A magistrate judge may take the  
 5 defendant's plea in a petty offense. *In every other misdemeanor case, a magistrate judge may*  
 6 *take the plea only if the defendant consents either in writing or on the record to be tried before*  
 7 *a magistrate judge and specifically waives trial before a district judge.*

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9       3. With full consideration of the issues before this Court, the defendant does not consent to  
 10 being arraigned by a magistrate judge and shall not enter a plea (sic), does not consent to a plea  
 11 being entered on my behalf. A magistrate judge does not have jurisdiction to arraign felony cases  
 12 without the expressed consent of the parties, nor can the district judge confer jurisdiction of the  
 13 same. "District court cannot by rule confer on magistrate jurisdiction not permitted by statute;  
 14 neither can consent of parties . . ." *United Steel Workers of America, AFL-CIO v. Bishop*, C.A.5  
 15 (Ala.) 1979, 598 F.2d 408.

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17       4. The Courts have stated; "Continued and vigilant supervision of U.S.C.A. Const. Art. III  
 18 judges is essential to the integrity of system which permits magistrates to conduct civil trials and  
 19 enter final judgment with consent of all parties, and judges must be careful to guard against any  
 20 compulsion to induce consent through imposition of cost, delays or any other penalties that  
 21 would be incompatible with conclusion that consent of parties is essential to constitutionality of  
 22 this section allowing magistrates to conduct trials (Cited Omitted)."

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24       5. A magistrate judge's scope of duties are fully restricted to compliance and consent of the  
 parties applicable to petty offences having waived their rights allowing a magistrate judge to

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 2 adjudicate an issue of law, as such is not applicable in felony cases. The Federal Magistrate Act  
 3 accordingly “ . . . does not grant to judges of the United States district courts authority to  
 4 delegate to magistrate as “additional duty” power to preside over selection of jury in felony  
 5 cases.” *U.S. v. Ford* C.A.5 (Tex.) 1987, 824 F.2d 1430, certiorari denied 108 S.Ct. 741, 484 U.S.  
 6 1034, 98 L.Ed.2d 776.

7  
 8 6. United States magistrate judges are former national park and other commissioners (28 USC  
 9 § 631-639) authorized to hear misdemeanor cases in the United States jurisdiction (18 USC §  
 10 3401), within the framework of regulations which utilize the United States Magistrate system  
 11 (28 CFR, Part 52.01 et seq., 32 CFR, Part 1290.1 et seq., and 43 CFR Part 9260.0-1), and are not  
 12 authorized to take pleas in felony matters with the expressed consent of the parties as referenced  
 13 supra.

14 The jurisdiction of magistrate judges is codified at 28 USC § 631 through 636. - Jurisdiction,  
 15 powers, and temporary assignment.

16 (a) Each United States magistrate judge serving under this chapter shall have  
 17 within the territorial jurisdiction prescribed by his appointment -  
 18 (1) all powers and duties conferred or imposed upon United States commissioners  
 19 by law or by the Rules of Criminal Procedure for the United States District  
 20 Courts;  
 21 (2) the power to administer oaths and affirmations, issue orders pursuant to  
 22 section 3142 of title 18 concerning release or detention of persons pending trial,  
 23 and take acknowledgements, affidavits, and depositions;

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2       (3) the power to conduct trials under section 3401, title 18, United States Code, in  
3       conformity with and subject to the limitations of that section;  
4       (4) the power to enter a sentence for a petty offense; and  
5       (5) the power to enter a sentence for a class A misdemeanor in a case in which the  
6       parties have consented.

7           (b) (1) Notwithstanding any provision of law to the contrary -

8              (A) a judge may designate a magistrate judge to hear and determine any pretrial  
9       matter pending before the court, except a motion for injunctive relief, for  
10      judgment on the pleadings, for summary judgment, to dismiss or quash an  
11      indictment or information made by the defendant, to suppress evidence in a  
12      criminal case, to dismiss or to permit maintenance of a class action, to dismiss for  
13      failure to state a claim upon which relief can be granted, and to involuntarily  
14      dismiss an action. A judge of the court may reconsider any pretrial matter under  
15      this subparagraph (A) where it has been shown that the magistrate judge's order is  
16      clearly erroneous or contrary to law.

17              (B) a judge may also designate a magistrate judge to conduct hearings, including  
18      evidentiary hearings, and to submit to a judge of the court proposed findings of  
19      fact and recommendations for the disposition, by a judge of the court, of any  
20      motion excepted in subparagraph (A), of applications for post-trial relief made by  
21      individuals convicted of criminal offenses and of prisoner petitions challenging  
22      conditions of confinement.

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2       (3) *A magistrate judge may be assigned such additional duties as are not*  
3       *inconsistent with the Constitution and laws of the United States.*

4       (4) Each district court shall establish rules pursuant to which the magistrate  
5       judges shall discharge their duties.

6       (c) Notwithstanding any provision of law to the contrary -

7           (1) Upon the consent of the parties, a full-time United States magistrate judge or a  
8       part-time United States magistrate judge who serves as a full-time judicial officer  
9       may conduct any or all proceedings in a jury or nonjury civil matter and order the  
10      entry of judgment in the case, when specially designated to exercise such  
11      jurisdiction by the district court or courts he serves. Upon the consent of the  
12      parties, pursuant to their specific written request, any other part-time magistrate  
13      judge may exercise such jurisdiction . . .”

14           (2) If a magistrate judge is designated to exercise civil jurisdiction under  
15      paragraph (1) of this subsection, the clerk of court shall, at the time the action is  
16      filed, notify the parties of the availability of a magistrate judge to exercise such  
17      jurisdiction. The decision of the parties shall be communicated to the clerk of  
18      court. Thereafter, either the district court judge or the magistrate judge may again  
19      advise the parties of the availability of the magistrate judge, but in so doing, shall  
20      also advise the parties that they are free to withhold consent without adverse  
21      substantive consequences. Rules of court for the reference of civil matters to

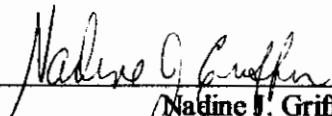
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2 magistrate judges shall include procedures to protect the voluntariness of the  
3 parties' consent.  
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5 Accordingly, the defendant does not give consent, verbal, implied, direct, written or otherwise,  
6 that would allow a magistrate judge to adjudicate the matter regarding both dispositive and  
7 nondispositive issues. See *Roell v. Withrow* – U.S. --, 123 S. Ct. 1696, 155 L. Ed. 2d 775, 784  
8 (2003)

9  
10 **WHEREFORE;** Arraignment of felony cases by magistrate judges, according to both statute  
11 and Court rule can only be done by waiver and consent of the parties, and the defendant neither  
12 waives nor consents to such actions. The defendant moves to be arraigned by a district Court  
13 Article III judge for purposes of these proceedings and any future proceedings herein  
14 adjudicated.

15  
16 Dated this 18<sup>th</sup> day of July 2005.

17  
18 Signature:

  
Nadine J. Griffin  
C/o 13799 Park Blvd. North #244  
Seminole, Florida [33776-3402]

21 Certificate of Mailing  
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OBJECTION TO ARRAIGNMENT

6 of 5

Nadine J. Griffin

BY MAGISTRATE JUDGE

Certificate of mailing page 5

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2 I, Nadine J. Griffin, certify that July 20, 2005, I deposited Certified Mail Article #:  
3 \_\_\_\_\_, mailed a true and correct copy of the above and  
4 foregoing objection to arraignment by magistrate to: Christopher Maietta, at:  
5

6 Christopher Maietta  
7 United States Attorney's Office  
8 1 Courthouse Way  
9 Suite 9200  
10 Boston, Massachusetts 02210

11 \_\_\_\_\_  
12 Nadine J. Griffin

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OBJECTION TO ARRAIGNMENT

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Nadine J. Griffin

BY MAGISTRATE JUDGE

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